

111TH CONGRESS
1ST SESSION

S. 1363

To streamline the regulation of nonadmitted insurance and reinsurance, and
for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 25, 2009

Mr. MARTINEZ (for himself, Mr. BAYH, Mr. NELSON of Florida, and Mr. CRAPO) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To streamline the regulation of nonadmitted insurance and
reinsurance, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Nonadmitted and Reinsurance Reform Act of 2009”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

Sec. 1. Short title and table of contents.

Sec. 2. Effective date.

TITLE I—NONADMITTED INSURANCE

Sec. 101. Reporting, payment, and allocation of premium taxes.

Sec. 102. Regulation of nonadmitted insurance by insured's home State.
 Sec. 103. Participation in national producer database.
 Sec. 104. Uniform standards for surplus lines eligibility.
 Sec. 105. Streamlined application for commercial purchasers.
 Sec. 106. GAO study of nonadmitted insurance market.
 Sec. 107. Definitions.

TITLE II—REINSURANCE

Sec. 201. Regulation of credit for reinsurance and reinsurance agreements.
 Sec. 202. Regulation of reinsurer solvency.
 Sec. 203. Definitions.

TITLE III—RULE OF CONSTRUCTION

Sec. 301. Rule of construction.
 Sec. 302. Severability.

1 **SEC. 2. EFFECTIVE DATE.**

2 Except as otherwise specifically provided in this Act,
 3 this Act shall take effect upon the expiration of the 12-
 4 month period beginning on the date of the enactment of
 5 this Act.

6 **TITLE I—NONADMITTED** 7 **INSURANCE**

8 **SEC. 101. REPORTING, PAYMENT, AND ALLOCATION OF** 9 **PREMIUM TAXES.**

10 (a) HOME STATE'S EXCLUSIVE AUTHORITY.—No
 11 State other than the home State of an insured may require
 12 any premium tax payment for nonadmitted insurance.

13 (b) ALLOCATION OF NONADMITTED PREMIUM
 14 TAXES.—

15 (1) IN GENERAL.—The States may enter into a
 16 compact or otherwise establish procedures to allocate
 17 among the States the premium taxes paid to an in-
 18 sured's home State described in subsection (a).

1 (2) EFFECTIVE DATE.—Except as expressly
2 otherwise provided in such compact or other proce-
3 dures, any such compact or other procedures—

4 (A) if adopted on or before the expiration
5 of the 330-day period that begins on the date
6 of the enactment of this Act, shall apply to any
7 premium taxes that, on or after such date of
8 enactment, are required to be paid to any State
9 that is subject to such compact or procedures;
10 and

11 (B) if adopted after the expiration of such
12 330-day period, shall apply to any premium
13 taxes that, on or after January 1 of the first
14 calendar year that begins after the expiration of
15 such 330-day period, are required to be paid to
16 any State that is subject to such compact or
17 procedures.

18 (3) REPORT.—Upon the expiration of the 330-
19 day period referred to in paragraph (2), the NAIC
20 may submit a report to the Committee on Financial
21 Services and Committee on the Judiciary of the
22 House of Representatives and the Committee on
23 Banking, Housing, and Urban Affairs of the Senate
24 identifying and describing any compact or other pro-
25 cedures for allocation among the States of premium

1 taxes that have been adopted during such period by
2 any States.

3 (4) NATIONWIDE SYSTEM.—The Congress in-
4 tends that each State adopt nationwide uniform re-
5 quirements, forms, and procedures, such as an inter-
6 state compact, that provides for the reporting, pay-
7 ment, collection, and allocation of premium taxes for
8 nonadmitted insurance consistent with this section.

9 (c) ALLOCATION BASED ON TAX ALLOCATION RE-
10 PORT.—To facilitate the payment of premium taxes
11 among the States, an insured’s home State may require
12 surplus lines brokers and insureds who have independently
13 procured insurance to annually file tax allocation reports
14 with the insured’s home State detailing the portion of the
15 nonadmitted insurance policy premium or premiums at-
16 tributable to properties, risks or exposures located in each
17 State. The filing of a nonadmitted insurance tax allocation
18 report and the payment of tax may be made by a person
19 authorized by the insured to act as its agent.

20 **SEC. 102. REGULATION OF NONADMITTED INSURANCE BY**
21 **INSURED’S HOME STATE.**

22 (a) HOME STATE AUTHORITY.—Except as otherwise
23 provided in this section, the placement of nonadmitted in-
24 surance shall be subject to the statutory and regulatory
25 requirements solely of the insured’s home State.

1 (b) **BROKER LICENSING.**—No State other than an in-
 2 sured’s home State may require a surplus lines broker to
 3 be licensed in order to sell, solicit, or negotiate non-
 4 admitted insurance with respect to such insured.

5 (c) **ENFORCEMENT PROVISION.**—With respect to sec-
 6 tion 101 and subsections (a) and (b) of this section, any
 7 law, regulation, provision, or action of any State that ap-
 8 plies or purports to apply to nonadmitted insurance sold
 9 to, solicited by, or negotiated with an insured whose home
 10 State is another State shall be preempted with respect to
 11 such application.

12 (d) **WORKERS’ COMPENSATION EXCEPTION.**—This
 13 section may not be construed to preempt any State law,
 14 rule, or regulation that restricts the placement of workers’
 15 compensation insurance or excess insurance for self-fund-
 16 ed workers’ compensation plans with a nonadmitted in-
 17 surer.

18 **SEC. 103. PARTICIPATION IN NATIONAL PRODUCER DATA-**
 19 **BASE.**

20 After the expiration of the 2-year period beginning
 21 on the date of the enactment of this Act, a State may
 22 not collect any fees relating to licensing of an individual
 23 or entity as a surplus lines broker in the State unless the
 24 State has in effect at such time laws or regulations that
 25 provide for participation by the State in the national in-

1 surance producer database of the NAIC, or any other
 2 equivalent uniform national database, for the licensure of
 3 surplus lines brokers and the renewal of such licenses.

4 **SEC. 104. UNIFORM STANDARDS FOR SURPLUS LINES ELI-**
 5 **GIBILITY.**

6 A State may not—

7 (1) impose eligibility requirements on, or other-
 8 wise establish eligibility criteria for, nonadmitted in-
 9 surers domiciled in a United States jurisdiction, ex-
 10 cept in conformance with such requirements and cri-
 11 teria in sections 5A(2) and 5C(2)(a) of the Non-Ad-
 12 mitted Insurance Model Act, unless the State has
 13 adopted nationwide uniform requirements, forms,
 14 and procedures developed in accordance with section
 15 101(b) of this Act that include alternative nation-
 16 wide uniform eligibility requirements; and

17 (2) prohibit a surplus lines broker from placing
 18 nonadmitted insurance with, or procuring non-
 19 admitted insurance from, a nonadmitted insurer
 20 domiciled outside the United States that is listed on
 21 the Quarterly Listing of Alien Insurers maintained
 22 by the International Insurers Department of the
 23 NAIC.

1 **SEC. 105. STREAMLINED APPLICATION FOR COMMERCIAL**
2 **PURCHASERS.**

3 A surplus lines broker seeking to procure or place
4 nonadmitted insurance in a State for an exempt commer-
5 cial purchaser shall not be required to satisfy any State
6 requirement to make a due diligence search to determine
7 whether the full amount or type of insurance sought by
8 such exempt commercial purchaser can be obtained from
9 admitted insurers if—

10 (1) the broker procuring or placing the surplus
11 lines insurance has disclosed to the exempt commer-
12 cial purchaser that such insurance may or may not
13 be available from the admitted market that may pro-
14 vide greater protection with more regulatory over-
15 sight; and

16 (2) the exempt commercial purchaser has sub-
17 sequently requested in writing the broker to procure
18 or place such insurance from a nonadmitted insurer.

19 **SEC. 106. GAO STUDY OF NONADMITTED INSURANCE MAR-**
20 **KET.**

21 (a) IN GENERAL.—The Comptroller General of the
22 United States shall conduct a study of the nonadmitted
23 insurance market to determine the effect of the enactment
24 of this title on the size and market share of the non-
25 admitted insurance market for providing coverage typi-
26 cally provided by the admitted insurance market.

1 (b) CONTENTS.—The study shall determine and ana-
2 lyze—

3 (1) the change in the size and market share of
4 the nonadmitted insurance market and in the num-
5 ber of insurance companies and insurance holding
6 companies providing such business in the 18-month
7 period that begins upon the effective date of this
8 Act;

9 (2) the extent to which insurance coverage typi-
10 cally provided by the admitted insurance market has
11 shifted to the nonadmitted insurance market;

12 (3) the consequences of any change in the size
13 and market share of the nonadmitted insurance
14 market, including differences in the price and avail-
15 ability of coverage available in both the admitted
16 and nonadmitted insurance markets;

17 (4) the extent to which insurance companies
18 and insurance holding companies that provide both
19 admitted and nonadmitted insurance have experi-
20 enced shifts in the volume of business between ad-
21 mitted and nonadmitted insurance; and

22 (5) the extent to which there has been a change
23 in the number of individuals who have nonadmitted
24 insurance policies, the type of coverage provided

1 under such policies, and whether such coverage is
2 available in the admitted insurance market.

3 (c) CONSULTATION WITH NAIC.—In conducting the
4 study under this section, the Comptroller General shall
5 consult with the NAIC.

6 (d) REPORT.—The Comptroller General shall com-
7 plete the study under this section and submit a report to
8 the Committee on Financial Services of the House of Rep-
9 resentatives and the Committee on Banking, Housing, and
10 Urban Affairs of the Senate regarding the findings of the
11 study not later than 30 months after the effective date
12 of this Act.

13 **SEC. 107. DEFINITIONS.**

14 For purposes of this title, the following definitions
15 shall apply:

16 (1) ADMITTED INSURER.—The term “admitted
17 insurer” means, with respect to a State, an insurer
18 licensed to engage in the business of insurance in
19 such State.

20 (2) AFFILIATE.—The term “affiliate” means,
21 with respect to an insured, any entity that controls,
22 is controlled by, or is under common control with the
23 insured.

1 (3) AFFILIATED GROUP.—The term “affiliated
2 group” means any group of entities that are all af-
3 filiated.

4 (4) CONTROL.—An entity has “control” over
5 another entity if—

6 (A) the entity directly or indirectly or act-
7 ing through one or more other persons owns,
8 controls or has the power to vote 25 percent or
9 more of any class of voting securities of the
10 other entity; or

11 (B) the entity controls in any manner the
12 election of a majority of the directors or trust-
13 ees of the other entity.

14 (5) EXEMPT COMMERCIAL PURCHASER.—The
15 term “exempt commercial purchaser” means any
16 person purchasing commercial insurance that, at the
17 time of placement, meets the following requirements:

18 (A) The person employs or retains a quali-
19 fied risk manager to negotiate insurance cov-
20 erage.

21 (B) The person has paid aggregate nation-
22 wide commercial property and casualty insur-
23 ance premiums in excess of \$100,000 in the im-
24 mediately preceding 12 months.

1 (C)(i) The person meets at least one of the
2 following criteria:

3 (I) The person possesses a net worth
4 in excess of \$20,000,000, as such amount
5 is adjusted pursuant to clause (ii).

6 (II) The person generates annual rev-
7 enues in excess of \$50,000,000, as such
8 amount is adjusted pursuant to clause (ii).

9 (III) The person employs more than
10 500 full-time or full-time equivalent em-
11 ployees per individual insured or is a mem-
12 ber of an affiliated group employing more
13 than 1,000 employees in the aggregate.

14 (IV) The person is a not-for-profit or-
15 ganization or public entity generating an-
16 nual budgeted expenditures of at least
17 \$30,000,000, as such amount is adjusted
18 pursuant to clause (ii).

19 (V) The person is a municipality with
20 a population in excess of 50,000 persons.

21 (ii) Effective on the fifth January 1 occur-
22 ring after the date of the enactment of this Act
23 and each fifth January 1 occurring thereafter,
24 the amounts in subclauses (I), (II), and (IV) of
25 clause (i) shall be adjusted to reflect the per-

centage change for such five-year period in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

(6) HOME STATE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term “home State” means, with respect to an insured—

(i) the State in which an insured maintains its principal place of business or, in the case of an individual, the individual’s principal residence; or

(ii) if 100 percent of the insured risk is located out of the State referred to in subparagraph (A), the State to which the greatest percentage of the insured’s taxable premium for that insurance contract is allocated.

(B) AFFILIATED GROUPS.—If more than one insured from an affiliated group are named insureds on a single nonadmitted insurance contract, the term “home State” means the home State, as determined pursuant to subparagraph (A), of the member of the affiliated group that

1 has the largest percentage of premium attrib-
2 uted to it under such insurance contract.

3 (7) INDEPENDENTLY PROCURED INSURANCE.—

4 The term “independently procured insurance”
5 means insurance procured directly by an insured
6 from a nonadmitted insurer.

7 (8) NAIC.—The term “NAIC” means the Na-
8 tional Association of Insurance Commissioners or
9 any successor entity.

10 (9) NONADMITTED INSURANCE.—The term
11 “nonadmitted insurance” means any property and
12 casualty insurance permitted to be placed directly or
13 through a surplus lines broker with a nonadmitted
14 insurer eligible to accept such insurance.

15 (10) NON-ADMITTED INSURANCE MODEL
16 ACT.—The term “Non-Admitted Insurance Model
17 Act” means the provisions of the Non-Admitted In-
18 surance Model Act, as adopted by the NAIC on Au-
19 gust 3, 1994, and amended on September 30, 1996,
20 December 6, 1997, October 2, 1999, and June 8,
21 2002.

22 (11) NONADMITTED INSURER.—The term
23 “nonadmitted insurer” means, with respect to a
24 State, an insurer not licensed to engage in the busi-
25 ness of insurance in such State.

1 (12) QUALIFIED RISK MANAGER.—The term
2 “qualified risk manager” means, with respect to a
3 policyholder of commercial insurance, a person who
4 meets all of the following requirements:

5 (A) The person is an employee of, or third
6 party consultant retained by, the commercial
7 policyholder.

8 (B) The person provides skilled services in
9 loss prevention, loss reduction, or risk and in-
10 surance coverage analysis, and purchase of in-
11 surance.

12 (C) The person—

13 (i)(I) has a bachelor’s degree or high-
14 er from an accredited college or university
15 in risk management, business administra-
16 tion, finance, economics, or any other field
17 determined by a State insurance commis-
18 sioner or other State regulatory official or
19 entity to demonstrate minimum com-
20 petence in risk management; and

21 (II)(aa) has three years of experience
22 in risk financing, claims administration,
23 loss prevention, risk and insurance anal-
24 ysis, or purchasing commercial lines of in-
25 surance; or

1 (bb) has one of the following designa-
2 tions:

3 (AA) a designation as a Char-
4 tered Property and Casualty Under-
5 writer (in this subparagraph referred
6 to as “CPCU”) issued by the Amer-
7 ican Institute for CPCU/Insurance In-
8 stitute of America;

9 (BB) a designation as an Asso-
10 ciate in Risk Management (ARM)
11 issued by the American Institute for
12 CPCU/Insurance Institute of America;

13 (CC) a designation as Certified
14 Risk Manager (CRM) issued by the
15 National Alliance for Insurance Edu-
16 cation & Research;

17 (DD) a designation as a RIMS
18 Fellow (RF) issued by the Global Risk
19 Management Institute; or

20 (EE) any other designation, cer-
21 tification, or license determined by a
22 State insurance commissioner or other
23 State insurance regulatory official or
24 entity to demonstrate minimum com-
25 petency in risk management;

1 (ii)(I) has at least seven years of ex-
 2 perience in risk financing, claims adminis-
 3 tration, loss prevention, risk and insurance
 4 coverage analysis, or purchasing commer-
 5 cial lines of insurance; and

6 (II) has any one of the designations
 7 specified in subitems (AA) through (EE)
 8 of clause (i)(II)(bb);

9 (iii) has at least 10 years of experi-
 10 ence in risk financing, claims administra-
 11 tion, loss prevention, risk and insurance
 12 coverage analysis, or purchasing commer-
 13 cial lines of insurance; or

14 (iv) has a graduate degree from an
 15 accredited college or university in risk
 16 management, business administration, fi-
 17 nance, economics, or any other field deter-
 18 mined by a State insurance commissioner
 19 or other State regulatory official or entity
 20 to demonstrate minimum competence in
 21 risk management.

22 (13) PREMIUM TAX.—The term “premium tax”
 23 means, with respect to surplus lines or independently
 24 procured insurance coverage, any tax, fee, assess-
 25 ment, or other charge imposed by a government en-

1 tity directly or indirectly based on any payment
 2 made as consideration for an insurance contract for
 3 such insurance, including premium deposits, assess-
 4 ments, registration fees, and any other compensation
 5 given in consideration for a contract of insurance.

6 (14) SURPLUS LINES BROKER.—The term “sur-
 7 plus lines broker” means an individual, firm, or cor-
 8 poration which is licensed in a State to sell, solicit,
 9 or negotiate insurance on properties, risks, or expo-
 10 sures located or to be performed in a State with
 11 nonadmitted insurers.

12 (15) STATE.—The term “State” includes any
 13 State of the United States, the District of Columbia,
 14 the Commonwealth of Puerto Rico, Guam, the
 15 Northern Mariana Islands, the Virgin Islands, and
 16 American Samoa.

17 **TITLE II—REINSURANCE**

18 **SEC. 201. REGULATION OF CREDIT FOR REINSURANCE AND** 19 **REINSURANCE AGREEMENTS.**

20 (a) CREDIT FOR REINSURANCE.—If the State of
 21 domicile of a ceding insurer is an NAIC-accredited State,
 22 or has financial solvency requirements substantially simi-
 23 lar to the requirements necessary for NAIC accreditation,
 24 and recognizes credit for reinsurance for the insurer’s

1 ceded risk, then no other State may deny such credit for
2 reinsurance.

3 (b) ADDITIONAL PREEMPTION OF
4 EXTRATERRITORIAL APPLICATION OF STATE LAW.—In
5 addition to the application of subsection (a), all laws, regu-
6 lations, provisions, or other actions of a State that is not
7 the domiciliary State of the ceding insurer, except those
8 with respect to taxes and assessments on insurance com-
9 panies or insurance income, are preempted to the extent
10 that they—

11 (1) restrict or eliminate the rights of the ceding
12 insurer or the assuming insurer to resolve disputes
13 pursuant to contractual arbitration to the extent
14 such contractual provision is not inconsistent with
15 the provisions of title 9, United States Code;

16 (2) require that a certain State's law shall gov-
17 ern the reinsurance contract, disputes arising from
18 the reinsurance contract, or requirements of the re-
19 insurance contract;

20 (3) attempt to enforce a reinsurance contract
21 on terms different than those set forth in the rein-
22 surance contract, to the extent that the terms are
23 not inconsistent with this title; or

1 (4) otherwise apply the laws of the State to re-
2 insurance agreements of ceding insurers not domi-
3 ciled in that State.

4 **SEC. 202. REGULATION OF REINSURER SOLVENCY.**

5 (a) DOMICILIARY STATE REGULATION.—If the State
6 of domicile of a reinsurer is an NAIC-accredited State or
7 has financial solvency requirements substantially similar
8 to the requirements necessary for NAIC accreditation,
9 such State shall be solely responsible for regulating the
10 financial solvency of the reinsurer.

11 (b) NONDOMICILIARY STATES.—

12 (1) LIMITATION ON FINANCIAL INFORMATION
13 REQUIREMENTS.—If the State of domicile of a rein-
14 surer is an NAIC-accredited State or has financial
15 solvency requirements substantially similar to the re-
16 quirements necessary for NAIC accreditation, no
17 other State may require the reinsurer to provide any
18 additional financial information other than the infor-
19 mation the reinsurer is required to file with its
20 domiciliary State.

21 (2) RECEIPT OF INFORMATION.—No provision
22 of this section shall be construed as preventing or
23 prohibiting a State that is not the State of domicile
24 of a reinsurer from receiving a copy of any financial
25 statement filed with its domiciliary State.

1 **SEC. 203. DEFINITIONS.**

2 For purposes of this title, the following definitions
3 shall apply:

4 (1) CEDING INSURER.—The term “ceding in-
5 surer” means an insurer that purchases reinsurance.

6 (2) DOMICILIARY STATE.—The terms “State of
7 domicile” and “domiciliary State” means, with re-
8 spect to an insurer or reinsurer, the State in which
9 the insurer or reinsurer is incorporated or entered
10 through, and licensed.

11 (3) REINSURANCE.—The term “reinsurance”
12 means the assumption by an insurer of all or part
13 of a risk undertaken originally by another insurer.

14 (4) REINSURER.—

15 (A) IN GENERAL.—The term “reinsurer”
16 means an insurer to the extent that the in-
17 surer—

18 (i) is principally engaged in the busi-
19 ness of reinsurance;

20 (ii) does not conduct significant
21 amounts of direct insurance as a percent-
22 age of its net premiums; and

23 (iii) is not engaged in an ongoing
24 basis in the business of soliciting direct in-
25 surance.

1 (B) DETERMINATION.—A determination of
 2 whether an insurer is a reinsurer shall be made
 3 under the laws of the State of domicile in ac-
 4 cordance with this paragraph.

5 (5) STATE.—The term “State” includes any
 6 State of the United States, the District of Columbia,
 7 the Commonwealth of Puerto Rico, Guam, the
 8 Northern Mariana Islands, the Virgin Islands, and
 9 American Samoa.

10 **TITLE III—RULE OF** 11 **CONSTRUCTION**

12 **SEC. 301. RULE OF CONSTRUCTION.**

13 Nothing in this Act or amendments to this Act shall
 14 be construed to modify, impair, or supersede the applica-
 15 tion of the antitrust laws. Any implied or actual conflict
 16 between this Act and any amendments to this Act and
 17 the antitrust laws shall be resolved in favor of the oper-
 18 ation of the antitrust laws.

19 **SEC. 302. SEVERABILITY.**

20 If any section or subsection of this Act, or any appli-
 21 cation of such provision to any person or circumstance,
 22 is held to be unconstitutional, the remainder of this Act,
 23 and the application of the provision to any other person
 24 or circumstance, shall not be affected.

